

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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ATMI PACKAGING, INC.,) Civil Action No. 1:10-cv-11247-RGS
Plaintiff,)
v.)) MILLIPORE'S PRELIMINARY
MILLIPORE CORPORATION,)) NONINFRINGEMENT DISCLOSURES
Defendant.))
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Pursuant to paragraph (A)(2) of the Court's March 1, 2011 Scheduling Order ("Scheduling Order"), the defendant Millipore Corporation ("Millipore") submits these Preliminary Noninfringement Disclosures to the plaintiff ATMI Packaging, Inc. ("ATMI Packaging") for the patents-in-suit: U.S. Patent Nos. 7,481,572 ("the '572 Patent"); 7,086,778 ("the '778 Patent"); 7,434,983 ("the '983 Patent"); 7,695,186 ("the '186 Patent"); 7,267,479 ("the '479 Patent"); 7,357,567 ("the '567 Patent"); and 7,384,027 ("the '027 Patent").

PRELIMINARY STATEMENT, RESERVATION OF RIGHTS,
AND GENERAL OBJECTIONS

1. These disclosures are directed to noninfringement issues only and do not address invalidity, unenforceability, or claim construction issues. Millipore reserves all rights with respect to such issues.

2. These disclosures are preliminary and are based on Millipore's current knowledge, understanding, and belief as to the facts and information available as of the date of these disclosures. Millipore has not completed its investigation, discovery, or analysis of information related to this action, and additional discovery may require Millipore to supplement or amend its Preliminary Noninfringement Disclosures.

3. Any noninfringement analysis depends, ultimately, upon claim construction, which is a question of law reserved for the Court. The claims have not yet been construed by the Court in this case and, thus, Millipore has not yet had the opportunity to compare the asserted claims, as construed by the Court, with the accused Millipore products. Millipore reserves the right to amend, supplement, or materially modify its Preliminary Noninfringement Disclosures after the claims have been construed by the Court. Millipore also reserves the right to amend, supplement, or materially modify its Preliminary Noninfringement Disclosures based on any claim construction positions that Millipore may take in this case.

4. Millipore's Preliminary Noninfringement Disclosures are directed to the claims that ATMI Packaging asserts Millipore infringes ("the Asserted Claims") with respect to the products that ATMI Packaging accuses of infringement.

ATMI Packaging alleges that Millipore directly infringes the following claims of the following patents by making, using, selling, and/or offering to sell the Mobius® Single-use Mixing Systems¹ (hereinafter "Mobius® MIX"):

Claims 1, 5, 7, 8, 10, 11, 12, 20, 21, 22, 23, 24, 25, 26, 29, 30, 31, 32, 34, 35, 37, 38, 39, 40, 41, 43, 44, 65, 68, 70, 71, 74, 76, 77, 78, 79, and 80 of the '572 Patent;

Claims 65, 66, 67, 68, 69, 70, and 71 of the '778 Patent;

Claims 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 13, 15, and 19 of the '186 Patent; and

Claims 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 20 of the '479 Patent.

ATMI Packaging alleges that Millipore directly infringes the following claims of the following patents by making, using, selling, and/or offering to sell the Mobius® Single-use Bioreactor (also called Mobius® CellReady) (hereinafter "Mobius® CellReady"):

¹ Also known as Mobius® Disposable Mixing Systems.

Claims 1, 5, 7, 8, 10, 11, 12, 20, 21, 22, 23, 24, 25, 26, 29, 30, 31, 32, 34, 35, 37, 38, 41, 43, 65, 68, 71, 74, 76, 77, 78, and 79 of the '572 Patent;

Claims 65, 66, 67, 68, 69, 70, 71, and 72 of the '778 Patent;

Claims 13, 15, and 19 of the '186 Patent;

Claims 1, 4, 5, 8, 9, 14, 15, 16, 17, 18, and 19 of the '983 Patent;

Claims 1, 4, 10, 11, 12, 14, 16, and 20 of the '567 Patent; and

Claims 9, 11, and 13 of the '027 Patent.

Millipore reserves the right to amend, supplement, or materially modify its Preliminary Non-Infringement Disclosures to the extent that ATMI Packaging is permitted to modify, clarify, or change its infringement allegations.

OPERATION OF THE ACCUSED PRODUCTS

ATMI Packaging has documents sufficient to show operation of accused products that it identified in its preliminary infringement disclosures. Millipore provided a sample of its Mobius® CellReady products for ATMI Packaging's inspection, including destructive inspection, and ATMI Packaging had access to the Mobius® CellReady product at INTERPHEX 2011, as demonstrated by the photographs included in ATMI Packaging's Preliminary Infringement Disclosures. ATMI Packaging has also had access to the Mobius® MIX, as demonstrated by the photographs included in its Preliminary Infringement Disclosures. In addition, ATMI Packaging obtained information from Millipore's website concerning the accused products. Millipore reserves the right to continue to supplement its production as additional documents or information is obtained and reserves the right to rely on additional documents to support its noninfringement defenses.

PRELIMINARY NONINFRINGEMENT DISCLOSURES

Pursuant to the Scheduling Order, Millipore sets out preliminary noninfringement disclosures for the Asserted Claims on a limitation by limitation basis in Millipore's Preliminary Noninfringement Claim Charts, attached hereto as Exhibits A-J. The claim charts providing the Basis for Noninfringement Disclosure are more fully described in the following table:

Exhibit	U.S. Patent Number	Accused Product
A	7,481,572	Mobius® MIX
B	7,086,778	Mobius® MIX
C	7,695,186	Mobius® MIX
D	7,267,479	Mobius® MIX
E	7,481,572	Mobius® CellReady
F	7,086,778	Mobius® CellReady
G	7,434,983	Mobius® CellReady
H	7,695,186	Mobius® CellReady
I	7,357,567	Mobius® CellReady
J	7,384,027	Mobius® CellReady

MILLIPORE CORPORATION

By its attorneys,

/s/ Susan G. L. Glovsky

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Dated: June 21, 2011

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated as non-registered participants on June 21, 2011.

/s/ Susan G. L. Glovsky